

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

ANTHONY JOHNSON,
Plaintiff

v.

**AQUEELAH JACKSON, SOJOURNER
RUDISILL, UNITED STATES OF AMERICA,
and UNITED STATES ARMY,**
Defendants

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: **CIVIL ACTION**
: **NO. 03-5737**
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MEMORANDUM OPINION

RUFE, J.

January 6, 2004

This is a personal injury action arising from a March 11, 2002 automobile accident. Plaintiff initiated suit in this Court on October 16, 2003. Defendants United States of America and United States Army have responded to the Complaint. Plaintiffs have been unable to effect service on Defendants Sojourner Rudisill and Aqueelah Jackson. Presently before the Court are Plaintiff's Petitions to Allow Service of Process pursuant to Pennsylvania Rule of Civil Procedure 430(a). For the reasons below, the Petitions are denied.

Under Federal Rule of Civil Procedure 4(e), service may be effected pursuant to the law of the state in which the district court sits. Under Pennsylvania law, in an action commenced in the First Judicial District (*i.e.*, Philadelphia County, where this Court is located), original process may be served within the county by the sheriff or a competent adult. Pa. R. Civ. P. 400.1(a)(1). "If service cannot be made" under Rule 400.1, "the plaintiff may move the court for a special order directing the method of service." Pa. R. Civ. P. 430(a). Such a motion must be accompanied by "an affidavit stating the nature and extent of the investigation which has been made to determine the

whereabouts of the defendant and the reasons why service cannot be made.” Id.

Before requesting an alternative method of service, a plaintiff must make a “good faith” effort to locate the defendant and properly effectuate service. Clayman v. Jung, 173 F.R.D. 138, 139 (E.D. Pa. 1997). Alternative methods of service are an “option of last resort.” Witherspoon v. City of Philadelphia, 768 A.2d 1079, 1089 n.3 (Pa. 2001) (Newman, J., dissenting). The commentary accompanying Rule 430(a) lists examples of the types of procedures contemplated by the Rule, but the list is not exhaustive. Deer Park Lumber, Inc. v. Major, 559 A.2d 941, 946 (Pa. Super. Ct. 1989). At minimum, it requires more than a “mere paper search.” Id. Thus, good faith efforts might include (1) inquiries of postal authorities, (2) inquiries of relatives, neighbors, friends and employees of the defendant, and (3) examinations of local telephone directories, voter registration records, local tax records, and motor vehicle records. See Pa. R. Civ. P. 430(a), Note.

Many of Plaintiff’s efforts to locate Jackson and Rudisill reflect the kind of procedures suggested by the Rule 430(a) commentators. Nonetheless, because it appears on this record that Plaintiff has left several stones unturned, the Court will deny the Petitions without prejudice to re-file.

Plaintiff made the following efforts to locate Defendant Jackson: (1) On October 27, 2003, a professional process server attempted personal service at Jackson’s address listed on the police accident report, Greenway Avenue in Philadelphia. That property was vacant. (2) On October 29, 2003, Plaintiff requested address information about Jackson from the Postmaster, who responded that Jackson had moved but left no forwarding address. (3) Plaintiff searched the Coles Telephone Directory, which lists residents by street address. Jackson’s name did not appear in the listing for the Greenway Avenue address. (3) On October 29, 2003, Plaintiff requested information about

Jackson from the Superintendent of Elections, who responded that one Aqueelah Jackson lived on Walnut Street in Philadelphia. Plaintiff did not contact this individual because her date of birth did not match the date of birth on the police accident report. (4) On October 29, 2003, Plaintiff requested basic information about Jackson from the Pennsylvania Department of Transportation, who replied that the information requested does not exist. (5) On December 2, 3 and 9, 2003, a private investigator went to the Greenway Avenue residence attempting to locate Jackson. There was no answer at the residence, neighbors did not know Jackson, and a passerby told him that someone named “Stacey” lives at the residence.

Prior to this litigation, Plaintiff’s counsel learned from Jackson’s mother that Defendant Rudisill also lived at the Greenway Avenue residence. Plaintiff made the following efforts to locate Defendant Rudisill: (1) On October 27, 2003, a professional process server attempted personal service at the Greenway Avenue residence and found that residence vacant. (2) On October 24, 2003, Plaintiff requested address information about Rudisill from the Postmaster, who responded that Rudisill had moved but left no forwarding address. (3) Plaintiff searched the Coles Telephone Directory. Rudisill’s name did not appear in the listing for the Greenway Avenue address. (4) On October 24, 2003, Plaintiff requested information about Rudisill from the Superintendent of Elections, who responded that no current voter registration record exists in her/his name. (5) On October 29, 2003, Plaintiff requested basic information about Rudisill from the Pennsylvania Department of Transportation, who replied that the information requested does not exist.

From the evidence submitted with Plaintiff’s Petitions, it appears that other avenues exist whereby Plaintiff may yet locate these Defendants. Some of these methods are suggested by

the Note to Rule 403, other courts, and the record before this Court: (1) searching local tax records; (2) interviewing the Aqueelah Jackson residing on Walnut Street in Philadelphia;¹ (3) seeking assistance from Jackson's automobile insurer, American Insurance Company, which is listed on the police accident report, along with Jackson's insurance policy number; (4) calling Jackson's telephone number listed on the police accident report; (5) talking to Jackson's mother, who previously assisted Plaintiff's counsel with efforts to locate Rudisill; (6) searching local telephone directories; (7) seeking assistance from Rudisill's insurer, State Farm, who previously corresponded with Plaintiff's counsel on October 24, 2002 (see Ex. A).

Plaintiff seeks an Order permitting service of process on Jackson and Rudisill by ordinary mail and certified mail at the Greenway Avenue residence. However, before permitting this form of service, the Court is of the opinion that a more extensive search for these Defendants is warranted. Alternative service is only appropriate when service "*cannot* be made" under the applicable Rule, and only as a last resort. Pa. R. Civ. P. 430(a) (emphasis added). Accordingly, until the Court is satisfied that service under Rule 400.1(a) *cannot* be made, alternative service will not be permitted.

An appropriate Order follows.

¹ It is not unreasonable to question the accuracy of the date of birth listed in the police accident report or voter registration records.

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ORDER

AND NOW, this 6th day of January, 2004, upon consideration of the Petition to Allow Service on Aqueelah Jackson [Doc. # 6] and the Petition to Allow Service on Sojourner Rudisill [Doc. # 7], and for the reasons set forth in the attached Memorandum Opinion, it is hereby **ORDERED** that the Petitions are **DENIED WITHOUT PREJUDICE**.

It is so **ORDERED**.

BY THE COURT:

CYNTHIA M. RUFÉ, J.